

## Message Text

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41

ACTION ARA-10

INFO OCT-01 ISO-00 EB-07 IGA-02 SS-15 SP-02 L-03 INR-07

SSO-00 INRE-00 ARAE-00 /047 W

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O 231545Z FEB 76

FM AMEMBASSY SANTIAGO

TO SECSTATE WASHDC IMMEDIATE 7320

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STADIS//////////

EO 11652: N/A

TAGS: EINV, CI

SUBJECT: OPIC/CHILE BILATERAL AGREEMENT

REF: STATE 41532

1. EMBASSY WOULD WELCOME AGREEMENT AMONG CONCERNED US AGENCIES ALONG LINES OF DRAFT LETTER DEPARTMENT HAS KINDLY SENT US IN REFTEL. WHEN EXECUTED, PROVISIONS OF LETTER WILL REOPEN ON A LIMITED BASIS USE OF OPIC INSURANCE FACILITIES TO ENCOURAGE AMERICAN INVESTMENT. CHILEANS WILL BE HELPED IN IMPLEMENTING THEIR DESIRE TO STIMULATE PRIVATE FOREIGN INVESTMENT IN THEIR COUNTRY. THE US WILL HAVE FOLLOWED THROUGH, AT LEAST TO SOME EXTENT, ON A LINE IT HAS BEEN PURSUING WITH THE CHILEANS FOR MANY MONTHS.

2. WE HAVE NOTED WITH INTEREST THE RATIONALE GIVEN FOR TIGHTLY LIMITING THE PROPOSED NEW PROGRAM, SO AS TO AVOID ANY ASSISTANCE TO INVESTMENTS IN LARGER SCALE EXTRACTIVE INDUSTRIES. IF OUR UNDERSTANDING IS CORRECT, OPIC HAS NOT RECENTLY EXTENDED INSURANCE TO LARGE-SCALE EXTRACTIVE INVESTMENT PROJECTS ELSEWHERE IN LATIN AMERICA. NEVERTHELESS WE ASSUME THERE IS NO PROHIBITION, IN LAW OR OPIC PRACTICE, AGAINST OPIC INSURANCE FOR THIS KIND OF INVESTMENT, NOR, AS WE UNDERSTAND IT, IS THE FACT OF PAST EXPROPRIATION OF FOREIGN INVESTMENT IN A COUNTRY NECESSARILY LIMITED OFFICIAL USE

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A BAR TO FUTURE OPIC PROGRAMS. IF OPIC INSURANCE IS TO BE

MADE AVAILABLE FOR OTHER COUNTRIES WITH A BACKGROUND OF EXPROPRIATION SIMILAR TO CHILE'S, WE WOULD HOPE THAT, OVER TIME, THE CONTINGENT POSSIBILITY OF FUTURE PROBLEMS IN CHILE WOULD NOT WEIGH MORE HEAVILY HERE THAN IN DOES IN SUCH COUNTRIES. INDEED, AS THE DEPARTMENT IS AWARE, THE PRESENT REGIME IN CHILE ENDORSES MORE STRONGLY THAN ALMOST ANY OTHER LA COUNTRY THE POLICIES AND CONCEPTS OF INTERNATIONAL LAW RELATING TO FOREIGN INVESTMENT ESPOUSED BY THE UNITED STATES.

3. OUR SOLE PROBLEM WITH THE DRAFT LETTER ARISES FROM ITS STIPULATION THAT ANY EXTRACTIVE INDUSTRY PROJECT TO BENEFIT FROM OPIC PROGRAMS SHOULD NOT COST MORE THAN \$10 MILLION AND THAT US PARTICIPATION BE IN THE FORM OF A MINORITY INTEREST. THERE ARE, HOWEVER, OTHER FACTORS WHICH CAN AFFECT THE LIKELIHOOD OF INVESTMENT DISPUTES OR THE EASE OF THEIR RESOLUTION. FOR EXAMPLE, A US CAPITAL CONTRIBUTION, IF IN THE FORM OF DEBT, MIGHT IN THE EVENT OF AN EXPROPRIATION CREATE FEWER DIFFICULTIES FOR BILATERAL RELATIONS THAN THOSE LIKELY TO FLOW FROM THE SAME DOLLAR VALUE CONTRIBUTION IN THE FORM OF EQUITY. DEBT AVOIDS THE PROBLEM OF EQUITY VALUATION (BOOK, MARKET, GOING CONCERN) WHICH HAS PROVED IN THE PAST TO BE A MAJOR OBSTACLE TO A PROMPT AGREEMENT ON COMPENSATION, AND HENCE A GENERATOR OF BILATERAL TENSION. THE DEPARTMENT MIGHT WISH TO CONSIDER, THEREFORE, A HIGHER LIMIT IF THE INVESTMENT WERE EXPRESSED IN THE FORM OF DEBT.

4. FURTHERMORE, THE STRUCTURE OF THE JOINT VENTURE, AND STRENGTH OF OTHER PARTNERS, MIGHT COUNT MORE HEAVILY IN WEIGHING EXPROPRIATION RISK THAN THE FACTOR OF SIZE ALONE. FOR EXAMPLE, THERE IS UNDER DISCUSSION A POSSIBLE COPPER CONSORTIUM IN WHICH THE GOVERNMENTS OF VENEZUELA AND BRAZIL WOULD PARTICIPATE DIRECTLY. IT IS VERY DIFFICULT TO CONCEIVE OF EXPROPRIATION IN SUCH A CASE, AND, ACCORDINGLY, A HIGHER LIMIT MIGHT BE JUSTIFIED.

5. HENCE, WE WOULD PREFER A LITTLE MORE FLEXIBILITY, WHICH COULD BE OBTAINED BY INSERTING A NEW SENTENCE AT THE END OF THE LETTER TO READ:

BEGIN TEXT. FURTHER, SHOULD OPIC CONSIDER THAT SPECIAL CIRCUMSTANCES IN A PARTICULAR CASE WOULD WARRANT AN EXCEPTION LIMITED OFFICIAL USE

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TO THE FOREGOING GUIDELINES, OPIC WILL CONSULT WITH THE DEPARTMENT AT AN EARLY STAGE. END TEXT.  
POPPER

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NNN

## Message Attributes

**Automatic Decaptioning:** Z  
**Capture Date:** 01 JAN 1994  
**Channel Indicators:** n/a  
**Current Classification:** UNCLASSIFIED  
**Concepts:** AGREEMENTS, TEXT, DIPLOMATIC COMMUNICATIONS, FOREIGN INVESTMENTS  
**Control Number:** n/a  
**Copy:** SINGLE  
**Draft Date:** 23 FEB 1976  
**Decaption Date:** 28 MAY 2004  
**Decaption Note:** 25 YEAR REVIEW  
**Disposition Action:** RELEASED  
**Disposition Approved on Date:**  
**Disposition Authority:** morefirh  
**Disposition Case Number:** n/a  
**Disposition Comment:** 25 YEAR REVIEW  
**Disposition Date:** 28 MAY 2004  
**Disposition Event:**  
**Disposition History:** n/a  
**Disposition Reason:**  
**Disposition Remarks:**  
**Document Number:** 1976SANTIA01416  
**Document Source:** CORE  
**Document Unique ID:** 00  
**Drafter:** n/a  
**Enclosure:** n/a  
**Executive Order:** N/A  
**Errors:** N/A  
**Film Number:** D760069-0200  
**From:** SANTIAGO  
**Handling Restrictions:** n/a  
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**Legacy Key:** link1976/newtext/t19760223/aaaaatqm.tel  
**Line Count:** 110  
**Locator:** TEXT ON-LINE, ON MICROFILM  
**Office:** ACTION ARA  
**Original Classification:** LIMITED OFFICIAL USE  
**Original Handling Restrictions:** STADIS  
**Original Previous Classification:** n/a  
**Original Previous Handling Restrictions:** n/a  
**Page Count:** 3  
**Previous Channel Indicators:** n/a  
**Previous Classification:** LIMITED OFFICIAL USE  
**Previous Handling Restrictions:** STADIS  
**Reference:** 76 STATE 41532  
**Review Action:** RELEASED, APPROVED  
**Review Authority:** morefirh  
**Review Comment:** n/a  
**Review Content Flags:**  
**Review Date:** 14 JUL 2004  
**Review Event:**  
**Review Exemptions:** n/a  
**Review History:** RELEASED <14 JUL 2004 by coburnhl>; APPROVED <14 JUL 2004 by morefirh>  
**Review Markings:**

Margaret P. Grafeld  
Declassified/Released  
US Department of State  
EO Systematic Review  
04 MAY 2006

**Review Media Identifier:**  
**Review Referrals:** n/a  
**Review Release Date:** n/a  
**Review Release Event:** n/a  
**Review Transfer Date:**  
**Review Withdrawn Fields:** n/a  
**Secure:** OPEN  
**Status:** NATIVE  
**Subject:** OPIC/CHILE BILATERAL AGREEMENT  
**TAGS:** EINV, CI, US  
**To:** STATE  
**Type:** TE  
**Markings:** Margaret P. Grafeld Declassified/Released US Department of State EO Systematic Review 04 MAY 2006